

WILMER CUTLER PICKERING
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October 11, 2005

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The Honorable Nathaniel M. Gorton
United States District Judge
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

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Re: *Robert Harrington, et al. v. Delta Airlines, Inc., et al.*,
U.S. District Court, D. Mass., C.A. No. 04-12558

Dear Judge Gorton:

I am writing to advise the Court that Plaintiffs in the above-captioned matter have repeatedly failed to meet deadlines to file oppositions to several motions to dismiss that have been pending now for between 10 and 12 weeks. The undersigned Defendants, therefore, believe it is reasonable to conclude that Plaintiffs do not intend to oppose these motions, and respectfully request that the Court decide their pending motions to dismiss. For the Court's convenience, the relevant procedural facts are set forth below:

1. Plaintiffs' Amended Complaint was filed on May 31, 2005. On July 15, 2005, the Domestic Defendants (*i.e.*, Delta Air Lines, American Airlines, Northwest Airlines, Alaska Airlines, Continental Airlines, Southwest Airlines, Airlines Reporting Corp., and the Air Transportation Association ("ATA")) filed a joint Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6), and the ATA also filed a separate Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. On July 29, 2005, Defendants Aer Lingus Ltd., Alitalia-Linee Aeree Italiane S.p.A., and British Airways, PLC each filed separate motions to dismiss under Rule 12(b)(6), and Defendant Deutsche Lufthansa, A.G. filed a motion to dismiss under Rules 12(b)(1) and 12(b)(6).¹

2. Plaintiffs' oppositions to the motions filed by the Domestic Defendants and ATA were due July 29, 2005, and their oppositions to the motions filed by Lufthansa, Aer Lingus, Alitalia, and British Airways were due August 12, 2005. *See* D. Mass. R. 7.1(b)(2) (allowing 14 days for filing opposition to motions). Plaintiffs did not file anything by those deadlines.

¹ More recently, motions to dismiss have also been filed by Defendants China Eastern Airlines Corp. Ltd. (September 21), China Southern Airlines Co. Ltd. (September 30), and the Federal Aviation Administration (September 30). This letter does not address these motions.

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3. Rather than timely filing oppositions, Plaintiffs instead waited until September 16, 2005 to file a motion for an extension--until October 1, 2005--to file a joint opposition to the above motions to dismiss.

The Court has not acted on that motion as of the date of this letter. In any event, Plaintiffs' own requested deadline has now come and gone, and Plaintiffs still have yet to file any opposition. It is reasonable to conclude, therefore, that Plaintiffs have no intention of doing so.

4. In light of Plaintiffs' extended silence, and to avoid any further delay in this case, the undersigned Defendants respectfully request that the Court decide their motions to dismiss.

Respectfully submitted,

/s/ David W. Ogden

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cc: Counsel of Record

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CERTIFICATE OF SERVICE

I, Daniel M. Esrick, hereby certify that a copy of the foregoing document has been served by electronic mail or facsimile this 11th day of October, 2005, upon counsel of record for all parties.

/s/ Daniel M. Esrick
Daniel M. Esrick